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DOCKET	
04-AFC-1	
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State of California
Energy Resources Conservation
and Development Commission

In the matter of

**San Francisco Electric Reliability Project
Power Plant Licensing Case**

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Docket No. 04-AFC-1

PMPD Comments

9-20-06

DATE

Comment # 1

Page 7 of the PMPD states:

³ During this proceeding, the Committee issued approximately two dozen Rulings and/or Orders in response to various requests/motions of the parties. About two-thirds were in response to motions filed by CARE and Sarvey. These same intervenors also appealed a half-dozen Rulings to the full Commission.

PMPD page 7

The PMPD unfairly characterizes my participation in this proceeding as a litany of motions and appeals to the full commission. In fact I filed only one motion, a motion to compel on February 6, 2006. Had this motion been granted we could have saved approximately two days of hearing time on the Southern Waterfront EIR issues and actually had a legal cumulative analysis. I requested a committee conference which for some reason was appealed to the full commission without my consent. I was also part of a joint motion to strike the applicants opening brief because I felt that the applicant had not properly filed his brief and I hoped the committee would then enforce its filing rules. This was to no avail as staff filed its reply motion 24 hours late and the committee accepted it. The case degenerated further when the applicant filed a motion to classify portions of my brief as public comment and then the committee allowed the applicant to file a reply to my reply. It appears that the Commissions filing rules apply only to intervenors.

Comment #2

The CEQA Guidelines require an evaluation of the comparative merits of “a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the project objectives” (Cal. Code Regs., tit. 14 §15126.6). The objectives of the applicant are listed on page 18 of the PMPD. These objectives are:

- Improve CCSF’s electricity reliability;
- Facilitate the shutdown of older, more polluting in-City generation; and
- Minimize local impacts of electrical generation.

PMPD p. 18

The evidence of the record is that The Trans Bay Cable Project would likely have the least environmental impacts overall. (Exhibit 46 p. 6.1, PMPD p. 22) “The evidence of record establishes that infrastructure improvements – a combination of both generation and transmission – are necessary to preserve electrical reliability in San Francisco. (Ex. 50, see **Local System Effects** section *infra*.) No evidence of record credibly challenges this fact. (PMPD page 15)” The SFERP in and of itself will not achieve the applicants stated purpose of achieving electrical reliability. To achieve the applicant’s goal of minimizing local impacts

from electrical generation the Transbay Cable project is clearly superior. The PMPD eliminates the Transbay cable project as the preferred alternative because by itself it would not meet CAL-ISO requirements for generation north of the Martin Substation. (Ex. 46, pp. 6-1, 6-25, 6-34, 6-36, 6-42.) The Cal-ISO requirement is that the SFERP must provide 100 MW of in city generation in all contingencies to release the Potrero 3 unit from its RMR contract. The SFERP in and of itself does not meet that requirement. The siting of a fourth turbine at the airport is required to meet the Cal-ISO requirement to shut down the Potrero 3 unit. The impacts of the turbine at the airport are not analyzed in the application or in the alternatives analysis. Also the record reflects that even with the fourth turbine at the airport the project will not meet the Cal-ISO generation standard of 100 MW to achieve the projects objective of closing the Potrero 3 unit. (RT 5-31 -06 p. 64 lines 8-19) As the PMPD states, "Second, and as also discussed in other portions of this Decision, certification of the SFERP does not necessarily result in the closure of the existing Potrero units. While the SFERP may 'facilitate' or 'create the opportunity' for such closure, the evidence is clear that "...only the power plant owner (Mirant) can decide to retire their generator units." (Ex. 50, p. 3, lines 21-22.) The SFERP like the Transbay cable and the SFIA alternative does not provide for the closure of the Potrero 3 unit in and of itself so the Transbay cable is the environmentally preferred alternative because it meets more of the projects objectives (minimizing the impacts of local generation) than the SFERP. The SFIA alternative is also superior to the SFERP because it would also reduce the impacts of local generation and increase reliability. None of the alternatives meet the ISO conditions to shut down the Potrero Power Plant. The PMPD must reject the SFERP unless the Commission wishes to provide overriding considerations. (Cal. Code Regs. tit. 14 §15126.6).

Comment #3

The PMPD states on page 25:

The evidence also establishes that the SFERP will enhance local system reliability while discharging lower levels of NOx for each energy unit generated compared with the existing, older generation facilities. These older facilities release larger quantities of NOx than the proposed facility and have questionable reliability due to older technology. Further, the SFERP's simple cycle configuration provides operating flexibility in dispatching power to meet system requirements. Existing facilities produce air emissions all the time compared with a simple cycle facility that only emits when operating. Thus, environmental impacts from the No Project alternative would include greater NOx emissions because newer power plants, including the proposed project, would not be available to displace production from older, higher NOx-emitting plants. (Ex. 43, p. 6-82.) Thus, Intervenor Sarvey's contention that the SFERP has greater local impacts than the existing Potrero Unit 3 (Opening Brief, p. 7) is simply not supported by the evidence. "

The PMPD falsely assumes that there will be local impacts from NO_x emissions. This is simply not true as the record demonstrates. (RT 5-31-06 p. 161 below) The only criteria pollutant that has local impacts is PM-10. The SFERP does emit more PM_{2.5} per Megawatt hour than the Potrero Unit. (Exhibit 15 p. 3-7) The PM-10 impacts from the two facilities are presented in Exhibit 15, pages B-17 and B-21. Since the applicant left out the isopleth lines on page B - 21 the Potrero PM-10 impact, the record is silent on which facility has the highest PM-10 impacts on the minority Bayview Community. What is clear is that the SFERP and the Potrero Units will have the highest PM-10 impacts of all scenarios (Exhibit 15, page B-23) and as the PMPD admits the closure of the Potrero units is solely at the discretion of Mirant. Since the Potrero units will not be shut down by the SFERP this project is just another addition of PM 2.5 impacts to the minority community in the project area in violation of environmental justice principals.

15 MR. SARVEY: The City recognizes that
16 there will be PM impacts at both Hunter's Point
17 and Bayview communities. Does the City believe
18 that there will be NO₂, CO or SO₂ health-based
19 standards which will be exceeded by this project?

20 MR. RUBENSTEIN: No.

RT 5-31-06 p. 161

Comment # 4

¹⁶ Intervenor Sarvey contends the SFERP will not enhance reliability. (Reply Brief, pp. 11-16.) He offered no probative evidence to support this claim. This matter is also discussed in the **Alternatives** section, *supra*.
PMPD page 92

The PMPD mischaracterizes my position. My position is that the action plan with the elimination of 385 MW in city generation will reduce reliability on the Peninsula.

Comment #5

Air quality table 1 on page 102 should include the new federal 8- hour ozone standard. The BAAQMD is in non-attainment of the standard.

Comment # 6

The PMPD states on page 107, “Intervenor Sarvey asserts that the street sweeping PM mitigation agreed to by Applicant and Staff is inadequate since it rains in the vicinity during the winter months (when most violations of applicable standards occur), The record shows, however, that the methodology used to calculate the PM emission factors takes into account the frequency of rain. (Ex. 38; see Applicant Reply Brief, pp. 7-9.) Exhibit 38 contains no reference to the frequency of rain anywhere; there is no credible evidence in the record that the street sweeping program’s projected emission reductions even considers rain. In fact, the only reference to rain’s impacts on the street sweeping program’s effectiveness is to the contrary, as demonstrated below. Additionally, most of the emission reductions from street sweeping are geological dust, which is not the equivalent of Combustion PM 2.5 from power plants. This is why the SCAQMD will not allow street sweeping as an emission reduction for combustion PM 2.5. The commission’s acceptance of these geological PM-10 emission reductions allows further unequal treatment of the minority community in violation of Federal Civil Rights Laws and State Environmental Justice Guidelines.

11 Q. Well, what value is the street sweeping
12 during the PM season, i.e., foggy winter months?
13 A. Well, at anytime that you're going to
14 have high dust levels for road traffic it's going
15 to provide a benefit. And the impacts of rainfall
16 in terms of dampening streets are maybe three or
17 four days. Consequently, you know, in between
18 rainstorms the program is going to be effective.
(Rubenstein RT 5-30-06 p. 251,252)

Comment # 7

The PMPD goes on to state on page 108 “Intervenor’s second point – that the SO_x offsets are not necessarily local – simply disregards and implicitly disputes the accepted regional emphasis of state and federal air quality regulation strategies. The PMPD relies on a regional strategy to mitigate a local impact. The reasoning is flawed and directly contradicted by the BAAQMD representative who is responsible for the implementation of the state and federal air quality regulations. The PMPD again relies incorrectly on a regional mitigation program which is designed to site new sources, not mitigate local impacts. Only the CEC’s judicial immunity allows them to make such disparate rulings that impact a minority community that is admittedly overburdened.

5 Q In your response to my comment number
6 five on the PDOC you state that the District's
7 offset requirements are not intended to mitigate
8 local impacts such as NO2 and nitrogen deposition
9 impacts, is that correct?
10 MR. BATEMAN: Correct. RT 5-24-06 p. 312

Comment # 8

Footnote 28 of the PMPD states:

²³ The intervenor referenced this five year old document numerous times but, despite several requests, failed to provide a copy. Moreover, it is not part of the evidentiary record of the case, but was assigned "Exhibit 92B" for identification purposes only. (5/31/06 RT 44-45.)
PMPD p. 109

The PMPD is wrong. I gave a copy of the Southern Waterfront SEIR to the hearing officer Gary Fay on May 31, 2006. I also provided a copy to dockets on July 17, 2006. The E-mail message confirming dockets receipt is pasted below. Please delete this footnote; it is an error of fact in the decision.

Subject: Re: Exhibit 92B SFERP
Date: 08/31/2006 10:11:29 AM Pacific Standard Time
From: docket@energy.state.ca.us
To: Sarveybob@aol.com
CC: Gfontani@energy.state.ca.us, Knicholl@energy.state.ca.us, Mread@energy.state.ca.us

Sent from the Internet ([Details](#))

**** High Priority ****

FYI,

A copy of Exhibit 92-B was submitted July 17, 2006 from Mr. Robert Sarvey.

Raquel Rodriguez

Dockets Staff
Siting / Dockets Unit
916-654-5076

Comment # 9

Air Quality finding number 8 states on page 112 states:

8. The project's PM₁₀ emissions can contribute to the existing violations of the state 24-hour PM₁₀ air quality standard. However, the required mitigation (in the form of PM₁₀ emission reduction credits) will mitigate the project's impacts to a level that is less than significant.

The finding states that there are PM-10 Emission Reduction Credits being surrendered; that is not true, there are no PM10 ERC's being surrendered.

Comment #10

The PMPD states on page 105:

Intervenor Sarvey apparently disagrees with the propriety of using these credits. (Ex. 74; see also Reply Brief, pp. 6-7.) As explained by both Applicant and Staff, however, use of ERCs in the present instance is proper and wholly consistent with federal and state plans for mitigating air emissions. (5/22/06 RT 226-27; Applicant Opening Brief, pp. 38-41; Staff Opening Brief, pp. 8-10.)

While the use of 1985 ERC's may be wholly consistent with federal law they fail the federal civil rights laws and the state environmental justice guidelines. The 1985 ERC's may satisfy new source review requirements but they do not mitigate the current ongoing problem of a community that is overburdened by industrial pollution as the applicant freely admits. The energy commission has a hard time accepting that the new source review requirements are merely a balancing act so new sources of pollution can be sited in the region; they do not mitigate CEQA or environmental justice considerations.

Comment # 11

The PMPD states:

The evidence establishes that the Applicant's purchase of 47.5 tons per year of oxides of nitrogen (NOx) emission reduction credits (ERC) from the nearby Potrero power plant will more than offset the SFERP's 39.8 tons per year of nitrogen emissions. (See Condition **AQ-38**.) The evidence also establishes that this will reduce the level of overall nitrogen emissions in the San Bruno Mountain area, thus eliminating any contribution by the SFERP to adverse impacts due to

nitrogen deposition. (5/31/06 RT 124-25; Ex. 46, pp. 4.2-13, 4.2-15 to 16.) As noted by Applicant and Staff, however, mitigation in the form of the surrender of ERCs is an approved programmatic method of reducing adverse regional emission impacts, in this instance those caused by NOx. (Applicant Reply Brief, pp. 12-13; Staff Reply Brief, p. 5.) There is no dispute that the NOx ERCs required exceed project emissions, therefore adequately canceling the SFERP's contribution to the existing nitrogen deposition impacts on San Bruno Mountain. (Ex. 46, p. 4.2-13.)

The PMPD claims that the NOx ERC's created in 1985 that will be surrendered mitigate the project's nitrogen deposition. The evidence of the record clearly refutes such an assumption. The applicant's nitrogen deposition analysis used background deposition numbers from 1988 through 1993. The emission reductions were created in 1985. ("The original deposition measurements covered the period between 1988 and 1993 at Fremont." Exhibit 15 p. 8.2c-2) In other words, the reductions from the 1985 ERC's had already occurred and do not reduce deposition levels

Secondly, staff's witness Mr. Brian Bateman of the BAAQMD specifically stated that the 1985 ERC's were not meant to mitigate nitrogen deposition. Since Mr. Bateman is in charge of the regional mitigation program and is the expert in these matters the Committee should defer to the air district.

5 Q In your response to my comment number
6 five on the PDOC you state that the District's
7 offset requirements are not intended to mitigate
8 local impacts such as NO2 and nitrogen deposition
9 impacts, is that correct?
10 MR. BATEMAN: Correct.
RT 5-24-06

Comment #12

Finding number 7 on page 189 states," The purchase of oxides of nitrogen offsets adequately mitigates SFERP's contribution to nitrogen deposition impacts." Ammonia emissions are responsible for 73% of the nitrogen deposition on San Bruno Mountain. (Exhibit 25 page 9) There is no mitigation for these emissions, so finding number 7 is an error of fact and an abuse of discretion. The PMPD on pages 184-186 launches a novel new concept in air quality mitigation. The PMPD states that the emission reductions for the shutdown of Hunters Point and Potrero Unit 3 somehow should be credited to the SFERP. The Hunters Point power plant was shut down in June of this year entirely independent of the licensing of the SFERP. The Potrero Unit 3 shutdown is speculative as the PMPD admits. Even if the SFERP were responsible for shutting down either of these power plants traditional air quality mitigation would

require the Applicant to buy the ERC's from Mirant or PGE to offset nitrogen deposition. The PMPD's logic would preclude any power plant from having to buy ERC's for NOx emissions in the district. Surely the PMPD can't expect any credible judicial body to accept this reasoning. Nitrogen deposition on San Bruno Mountain is a significant impact even with the possible closure of the Potrero 3 unit. The ammonia emissions from the SFERP will be a significant impact that should be mitigated as they were in Metcalf and Los Esteros.

Comment # 13

The PMPD states on page 308:

In Applicant's estimation, the SFERP is a critical component to reduce the environmental impacts of electric power generation in the Southeast San Francisco Community. (Opening Brief, pp. 22 -23, 26.) To achieve this goal, Applicant has stated that "[e]nvironmental justice is the primary factor for this entire project...". (5/31/06 RT 166: 16 – 20; Opening Brief, p. 22.) The Applicant variously contends that the SFERP will benefit the local community by facilitating the shutdown of existing Potrero units (5/31/06 RT 144, 45, 159), or at least assist in creating the opportunity for such shutdown (5/31/06 RT 166).⁵⁶

Overall, and as noted by Intervenor Sarvey (Opening Brief, p. 8), the evidence of record simply does not persuade us that generation at the Potrero site will necessarily cease as a result of the SFERP. This question is interesting, but not pivotal. We do not question Applicant's motivation, intention, or policy goals in this regard, but nevertheless must constrain ourselves to basing this Decision on matters of ascertainable fact, supported by credible evidence.

PMPD p. 303 Succinctly, the intervenors' position seems to be founded on the premise that this project, even with its lack of impacts, cannot be sited in Southeast San Francisco unless it somehow ameliorates existing impacts caused by past development. This misses the point. The Environmental Justice analysis explores whether certain groups will suffer *disproportionate* impacts as the result of a project. It is difficult to fathom how the lack of impacts from the SFERP could disproportionately affect anyone.

The Commission has never had an application where even the applicant agrees that there is a disproportionate impact on the community. The PMPD includes no discussion of the testimony of Francisco Da Costa, who has explained why the applicant is violating environmental justice principals. The applicants EJ witness Ann Eng agreed that the applicant has disproportionately sited numerous industrial projects in the community in her comments on the Southern Waterfront EIR Exhibit 92B before she was employed by the applicant. Despite the concurrence of both Environmental Justice Experts, the Committee with no environmental justice expertise refuses to accept overwhelming evidence in the record. This is an abuse of discretion. The major impact from this facility will be the PM 2.5 and TAC impacts that all parties agree are significant. The only PM 2.5 mitigation that is effective or quantifiable is the mitigation offered in

ASQC-11. In order to mitigate the PM 2.5 impacts from this project condition AQSC-11 would have to require 15 tons of PM 2.5 reductions to offset the annual PM 2.5 contribution to the overburdened community. Time and time again the City of San Francisco has used the Bayview and Potrero communities as their dumping ground for toxic waste and industrial facilities. This project is another example of environmental racism that is being supported by the Energy Commission.

Comment # 14

The LORS section on socioeconomics on page A-23 includes no laws related to environmental justice. These Federal laws and State Guidelines should be added.

Federal

1. US Constitution (equal protection);
2. Title VI of the 1964 Civil Rights Act (nondiscrimination in programs and activities funded with federal money);
3. Executive Order #12898 of 1994 (established the federal EJ program); and
4. EPA's 1998 EJ Guidance (provides details and guidance for implementing the federal EJ program).

State Law

1. California Constitution (equal protection);
2. Government Code Section 65040.12 (defines EJ and designates the Office of Planning and Research (OPR) as coordinator for state EJ program);
3. Government Code Section 65040.2 (requires the OPR to develop EJ guidelines for local General Plans);
4. Public Resources Code Section 71110 et seq. (establishes EJ program in Cal EPA with specific requirements for developing EJ policy, strategy and guidelines); and
5. California Resources Agency EJ policy (directs entities under its jurisdiction - including the California Energy Commission - to consider EJ in their environment-related decision making process). Website: <http://resources.ca.gov/>

State of California Public resources Public Resources Code section 71114.1

California Code of Regulations 71114.1. After the California Environmental Protection Agency develops the strategy pursuant to Section 71113 and before December 31, 2003, each board, department, and

office within the agency shall, in coordination with the Secretary for Environmental Protection and the Director of the Office of Planning and Research, review its programs, policies, and activities and identify and address any gaps in its existing programs, policies, or activities that may impede the achievement of environmental justice.